

Internal Revenue Service

memorandum

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date: **18 APR 1986**

to: District Counsel, Washington D.C. CC:WAS
Attn: Kendall C. Jones, Special Trial Attorney

from: Director Tax Litigation Divison CC:TL

subject: [REDACTED]

By memorandum dated February 26, 1986, you requested technical advice with respect to the above-referenced consolidated cases. We sought the views of the Interpretative Division and their comments, with which we concur, are attached in [REDACTED].

ISSUES

(1) Whether a charitable contribution deduction for a gift of an easement in perpetuity was allowable to taxpayers under section 170(f)(3)(B)(ii) and section 1.170A-7(b)(1)(ii) as in effect in 1979.

(2) Whether a charitable contribution for the gift was allowable under section 170(f)(3)(B)(iii) as then in effect.

(3) Whether the donee of the easement qualified as a recipient under the foregoing provisions?

CONCLUSIONS

(1) A charitable deduction was allowable to the taxpayer under section 170(f)(3)(B)(ii) as then in effect.

(2) Alternatively, a charitable contribution deduction was allowable under section 170(f)(3)(B)(iii) as then in effect.

(3) The donee was a qualified recipient of the gift.

FACTS

Briefly, taxpayers claimed charitable deductions for their respective share of a facade donated to a [REDACTED] conservation organization. The purposes of the organization do not include preservation of historically significant areas.

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The Commissioner filed a Motion for Partial Summary Judgment dated [REDACTED], contending therein that the donee is ineligible to receive a historic conservation easement under section 170(f)(3)(B)(iii), as in effect for tax year [REDACTED]. This contention is based upon language in the legislative history of that section to the effect that a relationship must exist between the nature of the conservation easement and the charitable purpose or function, constituting the donee organization's purpose for exemption. In the Motion this language is interpreted as requiring that the nature of the conservation easement be directly related to the charitable purpose of the donee. As of the date of the subject gift no regulations had been issued interpreting section 170(f)(3)(B)(iii). Taxpayers contend that the gift qualified as one described in both clauses (ii) and (iii) of section 170(f)(3)(B) as then in effect, and that the donee was a qualified recipient. On January 13, 1986, the Treasury issued TD 8069 that included section 1.170A-14 which applies to qualified conservation contributions donated after December 17, 1980, and modifies section 1.170A-7(b)(1)(ii).

ANALYSIS

I.R.C. § 170(f)(3)(B)(ii) permits the deduction for the contribution of an undivided portion of the taxpayer's interest in property. Section 170(f)(3)(B)(iii), as in effect in [REDACTED] permitted a deduction for a charitable contribution of an easement with respect to real property granted in perpetuity to an organization described in IRC § 170(b)(1)(A) exclusively for conservation purposes.

Treas. Reg. § 1.170A-7(b)(1)(ii), as in effect in [REDACTED] provided that a charitable contribution of an open space easement in gross in perpetuity shall be considered a contribution of an undivided portion of the donor's entire interest in property which is excepted from the provisions of IRC § 170(f)(3)(A). (a transfer, not in trust, of less than donor's entire interest in property is not deductible).

In Revenue Ruling 75-358, 1975-2 C.B. 76, the owner of a mansion which had been declared a state landmark because of its unique architecture, donated to the state an enforceable easement in perpetuity restricting the right to subdivide, mine, or industrially develop the property, or to alter the appearance or modify the architectural characteristics of the residence. The revenue ruling holds that the described easement is a scenic easement within the meaning of the open space easement language of Treas. Reg. § 1.170A-7(b)(1)(ii). The regulation, consistent with the statute in effect, did not distinguish between an "open space" easement for ecological purposes, one for scenic purposes

or one for historic preservation purposes. The memorandum concludes the the revenue ruling is an appropriate interpretation of the regulation and taxpayers' contribution is deductible under IRC 170(f)(3)(B)(ii).


The memorandum then analyzes section 170(f)(3)(B)(iii) and concludes that although no interpretive regulations had been issued, subsequent legislative enactments and history makes it clear that the instant contribution also qualifies for deduction under the statute.

It is then concluded that Congress did not intend that a direct relationship exist between the nature of the easement contributed and the donee's purpose for exemption. Rather, so long as the donee's purpose for exemption was related to conservation, it would qualify as an eligible donee under the statute.

Based on the foregoing, it is suggested that the Commissioner withdraw his Motion and concede that taxpayers' contributions are deductible under the relevant statute, regulations and ruling.

If you have any further questions concerning this matter, please contact Mr. Keith A. Aqui at 566-3308.

ROBERT P. RUWE
Director

By: 
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Attachment:
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